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The Monroe Doctrine and Latin America

The relation of the Doctrine to the League Covenant, the Kellogg Treaties, and the Anti-War Pact

ON July 19, 1928, Costa Rica replied to the Council's invitation to re-enter the League of Nations by requesting from the Council an "express and authorized declaration with regard to the actual scope and correct interpretation" of the Monroe Doctrine. It expressed the opinion that by virtue of Article 21 of the Covenant of the League of Nations "the international legal scope of the Monroe Doctrine was extended," and that the doctrine had "since been converted, for all the nations signatory to the treaty of Versailles, into a constituent part of American Public Law."[1]

Is Costa Rica's interpretation of the effect of Article 21 correct? If the Monroe Doctrine has in fact been converted into a principle of "American Public Law," who is now charged with its interpretation—the United States or the League of Nations? If Article 21 has had no effect on the Monroe Doctrine, how will the Latin American States Members of the League view future applications of the doctrine by the United States? What attitude may the United States be expected to take should the League attempt to interpret or inquire into the Monroe Doctrine?

THE MONROE DOCTRINE

The text of the Monroe Doctrine is found in President Monroe's Annual Message to Congress December 2, 1823, in which he reviewed the events then taking place on the American continents. He referred to pending negotiations with Russia regarding the northwest coast of America, and pronounced himself in favor of the principle of non-colonization of the American continents.

> "In the discussions to which this interest has given rise, and in the arrangements by which they may terminate, the occasion has been judged proper for asserting as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition

1. The government of Costa Rica to the President of the Council, July 19, 1928. League of Nations, *Monthly Summary*, Sept. 15, 1928, Geneva, 1928, p. 223.

The bibliography of this report will be sent on request.

which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers."

Referring to the position of the new Spanish-American republics, the President, following out Washington's Farewell Address to its logical conclusion, declared himself in favor of mutual non-intervention as between Europe and the New World, and specifically against the extension by European powers of their political system to any portion of the Western hemisphere.

"We owe it, therefore, to candor, and to the amicable relations existing between the United States and those powers, to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition toward the United States. . .

"Our policy in regard to Europe, which was adopted at an early stage of the wars which have so long agitated that quarter of the globe, nevertheless remains the same, which is not to interfere in the internal concerns of any of its powers. . . But in regard to these continents, circumstances are eminently and conspicuously different. It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness; nor can anyone believe that our southern brethren, if left to themselves, would adopt it of their own accord."

ANALYSIS OF THE MONROE DOCTRINE

The Monroe Doctrine, a unilateral policy of the United States, was proclaimed at a time when the American continent was but partially settled, and still offered many opportunities for colonization. The new States established in Latin America were politically weak and economically undeveloped. They feared that Spain might attempt to reconquer them, and looked to the United States for protection against aggression. In 1823 Monroe expressed not only the aspirations of the United States, but of the Latin American States as well.

In the course of the last century the Latin American States have attained a considerable degree of political and economic development. A number of them have shown themselves capable of maintaining internal order and of protecting themselves against attack. They have entered into close intellectual and commercial relations with European States and display an interest in European affairs. Altered conditions, however, have not brought from the United States a re-statement of the Monroe Doctrine. The Latin American States, uncertain of its present scope and meaning, persistently demand an interpretation which would meet the international situation as it exists today.

In order to arrive at a correct contemporary estimate of the Monroe Doctrine, it is necessary to examine the basis of the doctrine; the form in which it is cast; the interpretations, both positive and negative, which have been given to it by the United States; its relation to the Covenant of the League of Nations, the Kellogg arbitration treaties and the Anti-War Pact, and its possible development in the future, both in theory and practice.

BASIS AND FORM OF DOCTRINE

The underlying principle of the Monroe Doctrine is the right of self-protection—a right which, according to international law, belongs to every State. This right, said Mr. Root, "is a necessary corollary of independent sovereignty."

The form in which the Monroe Doctrine is cast, however, has led to considerable misunderstanding. The doctrine has not been embodied in legislation, nor has it been sanctioned by Congress. Until it was referred to in the Covenant it had never been mentioned in the text of a treaty.[2] Originally a unilteral statement of policy, it has

2. It is mentioned in the reservations made by the United States to the Hague Conventions of 1899 and 1907, but not in the conventions themselves.

been frequently commented upon, and the comments themselves have in turn been referred to by succeeding Presidents and Secretaries of State. It is not contrary to international law, although possible applications of it might easily be so; it is not, however, a rule of international law.[3] Every State is entitled to proclaim a similar doctrine; whether it would be similarly successful in applying it is another question. Great Britain, in a note of May 19, 1928, addressed to the United States, made a statement of policy which has been referred to as "the British Monroe Doctrine."[4] China has feared the recognition by other States of Japan's special interests in Asia—the so-called "Japanese Monroe Doctrine." The Soviet Government has indicated that it considers declarations of such doctrines as a threat to peace.

> "Recognition of such a right [as that declared in the British note]. . . would come to justifying war and might be taken as a contagious example by other signatories of the covenant who by reason of equal rights would also take upon themselves the same liberty with regard to other regions and the result would be that there would probably be no place left on the earthly globe where the covenant could be put in operation."[5]

INTERPRETATIONS AND CRITICISMS

The Monroe Doctrine is subject to no official interpretation except such as may from time to time be given to it by the United States. Interpretations of the doctrine are inevitably influenced and determined by the conditions prevailing on the American continent at a given time.

The Monroe Doctrine may and has been criticized by the Latin American States on the ground that it involves, in practice, the self-imposed championship of American interests by the United States, and to this extent directly affects and at times interferes with the development of Latin American States in certain directions. In order to meet this objection, Latin American writers on international law have claimed that the Monroe Doctrine, "the manifestation of the desires of an entire continent," should be declared to be "an American principle of international law."[6] The advantage of such a declaration would be that the Latin American States, as well as the United States, would become the guarantors of the doctrine; intervention, should it become necessary, would be a matter of continental policy, and action would be taken by the several States, not by the United States alone. That certain Latin American States are now considered equal to the task by the United States was indicated as early as 1905 by President Roosevelt, when he said:

> "There are certain republics to the south of us which have already reached such a point of stability, order, and prosperity that they themselves, though as yet hardly consciously, are among the guarantors of this doctrine."[7]

A declaration such as that advocated by Latin American writers could conceivably be adopted at one of the Pan American conferences; the tendency shown by these conferences in the past, however, to avoid the discussion of political questions, gives little promise that such a step could be taken in the future.

At present, the Latin American States can obtain only a negative interpretation of the Monroe Doctrine from the United States. It is easier for a State to declare what one of its policies is not, than to declare what it is. Even a negative statement, however, cannot be considered binding on the United States in the future. Such representative statesmen as Olney, Hughes and Root agree that the Monroe Doctrine is definitely not a policy of aggression, whatever else it may be.[8] It must not be forgotten, however, that actions

3. Brierly, J. L. *The Law of Nations.* Oxford, The Clarendon Press, 1928, p. 164-165. Root, E. *The Real Monroe Doctrine.* Proceedings of the American Society of International Law, 1914, p. 6.

4. The British Secretary of State for Foreign Affairs (Chamberlain) to the American Ambassador (Houghton), May 19, 1928. *Notes Exchanged Between the United States and Other Powers on the Subject of a Multilateral Treaty for the Renunciation of War.* Washington, Government Printing Office, 1928, p. 23, 25. Cf. F. P. A. *Information Service,* Vol. IV, No. 18, p. 368-370. *The Anti-War Pact.*

5. M. Litvinoff to M. Herbette, Ambassador of the French Republic in Moscow, Aug. 31, 1928, signifying the Soviet Government's adherence to the Kellogg Pact. Department of State, Press Release, Oct. 4, 1928.

6. Alvarez, A. *The Monroe Doctrine.* New York, Oxford University Press, 1924, p. 228-229.

7. *Fifth Annual Message to Congress,* Dec. 5, 1905. For. Rels. 1905. The United States accepted the good offices of Argentina, Brazil and Chile for the settlement of its conflict with Mexico in 1914. For. Rels. 1914, p. 488-489.

8. Cf. Mr. Olney to Mr. Bayard, July 20, 1895. For. Rels. 1895, p. 545, 554. Root, E. *The Real Monroe Doctrine.* Proceedings of the American Society of International Law, 1914, p. 6. Hughes, C. E. *The Centenary of the Monroe Doctrine.* Washington, Government Printing Office, 1923.

which may not be justified under the Monroe Doctrine are not *ipso facto* barred; the Monroe Doctrine is "only a phase of American policy in this hemisphere."[9]

THE MONROE DOCTRINE AT THE PEACE CONFERENCE

The Monroe Doctrine received serious consideration at the Peace Conference. President Wilson viewed the Covenant of the League of Nations as "the logical extension of the Monroe Doctrine to the whole world."[10] In an address delivered at the Second Pan American Scientific Congress, January 6, 1916, he had already suggested that the American States should unite "in guaranteeing to each other absolutely political independence and territorial integrity." Article 10 of the Covenant, which provides that "the Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League," embodied, in his opinion, the main principle of the Monroe Doctrine. To this article exception was taken at an early date by other members of the American delegation, who believed that the Covenant would meet with opposition in the United States unless some provision covering this country's interests on the American continent could be inserted.[11] That they had correctly gauged opinion in the United States was proved by Senator Hitchcock's statement, in a letter of March 4, 1919, to the effect that a reservation of the Monroe Doctrine would be likely to influence votes for the Covenant, should it become a part of the peace treaty.[12] In a telegram of March 18, 1919, Taft likewise suggested "more specific reservation of the Monroe Doctrine," and outlined the form such a reservation should take:

> "'Any American state or states may protect the integrity of American territory and the independence of the government whose territory is threatened whether a member of the League or not, and may, in the interest of American peace, object to and prevent the further transfer of American territory or sovereignty to any power outside the Western hemisphere.'"[13]

On March 18, when changes in the Covenant were considered by the Commission on the League of Nations, the Monroe Doctrine was briefly discussed. President Wilson pointed out that the doctrine had never been defined, and that the Senate did not wish to have it defined. "It was agreed . . . that it would be impossible to put in the Covenant a reservation of the Monroe Doctrine without a similar reservation of an Asiatic doctrine of the Japanese, and accordingly the idea was disapproved."[14]

Early drafts of a clause intended to cover the Monroe Doctrine did not mention the doctrine by name.[15] After March 19 negotiations regarding the insertion in the Covenant of a clause referring specifically to the Monroe Doctrine assumed importance. It may be said, in general, that the French delegation relentlessly opposed such a clause; they feared that reference to the Monroe Doctrine, if made at the end of Article 10, would diminish if not destroy the security guaranteed to France by that article—in other words, that the United States would avail itself of such a clause in order to avoid future interference in European affairs. The British delegation was divided, Lord Cecil supporting the clause, Lloyd George demanding a *quid pro quo*, which was to take the form of an understanding between Great Britain and the United States regarding future naval policy.[16] Italy made no objections to the clause. China feared that the insertion of such a clause in the Covenant might leave a loophole for the Japanese in their contention for a sphere of influence in Asia.

9. Hughes, C. E. *op. cit.*

10. House, E. M. *Intimate Papers of Colonel House.* Boston, Houghton Mifflin, 1926-28, 4 Vols. Vol. IV, p. 427.

11. Lansing, R. *Memorandum as to Form of International Agreement to Prevent Infringement upon Territorial and Political Rights,* Miller, D. H. *The Drafting of the Covenant,* New York, Putnam, 1928. 2 Vols. Vol. I, p. 29-30; draft treaty prepared by J. B. Scott and D. H. Miller, *Ibid* p. 33.

12. Miller, D. H. *op. cit.* Vol. I, p. 276.

13. *Ibid.* p. 277.

14. *Ibid.* p. 295.

15. Such drafts were prepared by Lord Robert Cecil, Mr. Gregory and David Hunter Miller. D. H. Miller, *op. cit.* Vol. I, p. 297-298.

16. House, E. M. *op. cit.* Vol. IV, p. 415-416.

It was originally intended to formulate the clause as an addition to Article 10 of the Covenant. With this end in view, Wilson prepared the following draft for the meeting of March 24:

> "Nothing in this Covenant shall be deemed to deny or affect the right of any American state or states to protect the integrity of American territory and the independence of any American Government whose territory is threatened, whether a member of the League or not, or, in the interest of American peace, to object to or prevent the further transfer of American territory or sovereignty to any power outside the Western Hemisphere."[17]

The French contention, as expressed by Larnaude, was that if the Monroe Doctrine was not inconsistent with the Covenant, it should not be specifically referred to.[18] Lloyd George objected to the inclusion in the Covenant of a doctrine specifically applicable to only one part of the world.[19] Sir Robert Borden, on the other hand, was of the opinion that if the Monroe Doctrine were to receive recognition as an "International Convention . . . the responsibilities which it entails would be more definitely understood, not only in the United States but among all the nations."[20]

On April 10 the Commission on the League of Nations discussed the amendment to Article 10 proposed by President Wilson:

> "Nothing in this Covenant shall be deemed to affect the validity of international engagements such as treaties of arbitration or regional understandings like the Monroe Doctrine for securing the maintenance of peace."[21]

In the course of the discussion, Lord Robert Cecil made the following statement regarding the nature of the amendment:

> "It gives to these engagements no sanction or validity which they have not hitherto enjoyed. It accepts them as they are. And in particular it accepts the Monroe Doctrine as it is, a doctrine which has never been expressed in terms. Indeed, it is well to leave it undefined and as an example, because if we attempted to state it we might be extending or limiting its application. Yet in spite of the fact that it has never been definitely formulated, it would not be common sense to deny that such a doctrine has existed and has been acted upon."[22]

The objections of the French and their demands for a definition of the doctrine were finally swept aside by Clemenceau. The Monroe Doctrine amendment was adopted on April 11; at the suggestion of Lord Robert Cecil it was embodied in a separate article—Article 21.

THE MONROE DOCTRINE AND THE COVENANT

It was generally assumed at the Peace Conference that the doctrine was not inconsistent with the Covenant. It was thought, however, that the inclusion of the doctrine in the Covenant would serve to bring it within the sphere of international law, and in this way perhaps permit of its interpretation by members of the international community other than the United States. In effecting this transfer of the doctrine from the realm of unilateral foreign policy into that of international law, by means of a multilateral treaty, the authors of the Covenant gave it the name "regional understanding." The terminology of the article gives rise to the assumption, historically incorrect, that the Latin American States have formally participated in the enunciation of a doctrine which the article itself does not attempt to define. *La Prensa* (Buenos Aires), in an editorial of September 2, 1928, remarks:

> "There is no interpretation that can convert a unilateral declaration into a 'regional understanding'—a vague expression with which the League of Nations qualifies the dangerous uncertainties of the Monroe Doctrine."

If the doctrine were in reality what the Covenant states it to be—an agreement be-

17. Miller, D. H. *op. cit.* Vol. I, p. 322.
18. House, E. M. *op. cit.* Vol. IV, p. 415.
19. Miller, D. H. *op. cit.* Vol. I, p. 337.
20. *Ibid.* p. 363.
21. *Ibid.* p. 442.
22. *Ibid.* p. 443. Compare the statement made in the British commentary on Article 21: "Article XXI makes it clear that the Covenant is not intended to abrogate or weaken any other agreements, so long as they are consistent with its own terms, into which the members of the League may have entered, or may enter hereafter, for the further assurance of peace. Such agreements would include special treaties for compulsory arbitration, and military conventions that are genuinely defensive. The Monroe doctrine and similar understandings are put in the same category. They have shown themselves in history to be not instruments of national ambition, but guarantees of peace. . . At first a principle of American foreign policy, it [the doctrine] has become an international understanding, and it is not illegitimate for the people of the United States to ask that the Covenant should recognize this fact." British Parliamentary Papers, *The Covenant of the League of Nations with a Commentary Thereon.* 1919, Cmd. 151, p. 18.

tween a number of States on certain matters of policy—it would be open to interpretation by the several parties and could, in case of disagreement, be submitted to an arbitral tribunal for examination. President Wilson, at the Peace Conference, had expressed the opinion that "if, for any reason, the Monroe Doctrine should take a line of development inconsistent with the principles of the League, the League would be in a position to correct this tendency."[23] May the League, however, attempt to interpret the unilateral policy of a non-member State?

The attitude of the Senate towards Article 21 was indicated in the fifth reservation it made to the Treaty of Versailles:

> "The United States will not submit to arbitration or to inquiry by the assembly or by the council of the League of Nations, provided for in said treaty of peace, any questions which in the judgment of the United States depend upon or relate to its long-established policy commonly known as the Monroe Doctrine; said Doctrine is to be interpreted by the United States alone and is hereby declared to be wholly outside the jurisdiction of said league of nations and entirely unaffected by any provision contained in the said treaty of peace."[24]

LATIN AMERICAN REQUESTS FOR INTERPRETATIONS

The Latin American States, on several occasions, have sought to obtain interpretations and definitions of the Monroe Doctrine in relation to the Covenant. At the Plenary Session of the Peace Conference, April 28, 1919, the delegate of Honduras declared that the Monroe Doctrine, which had "never been inscribed in an international document" or "expressly accepted by the nations of the Old and the New World," should be clearly defined in such a manner as to permit of its inclusion in written international law. He submitted the following amendment to the Covenant which, he thought, would achieve his purpose:

> "This doctrine, which the United States of America have maintained since 1823, the date on which it was proclaimed by President Monroe, means that all the American Republics have a right to independent existence, in the sense that no nation can acquire by conquest any part of their territory, nor intervene in their government or internal administration, nor carry out any other act which might threaten their autonomy or wound their national dignity, but it is not opposed to the confederation or union of the Latin American States in some other form, for the purpose of fulfilling their destiny in the best possible way."[25]

On December 14, 1919, the Minister of Foreign Affairs of Salvador, prior to Salvador's accession to the Covenant, requested the Department of State for its opinion of the actual status of the Monroe Doctrine and of its possible development in the future. In reply the Department of State, on February 26, 1920, referred Salvador to the address made by President Wilson on January 6, 1916, at the Second Pan American Scientific Congress in Washington. The government of Salvador, after consideration of this address, decided to accede to the Covenant.[26]

On February 28, 1928, M. Cantilo, the Argentine delegate on the Committee on Arbitration and Security, protested against the wording of Article 21. He said:

> "It is my duty to make objections, in the name of historical accuracy, to the wording of Article 21.
>
> "The Monroe Doctrine mentioned in the article is a political declaration of the United States. The policy expressed or enshrined in this declaration in opposing, when it was made, the designs of the Holy Alliance, and in removing the threat of a European reconquest of America, was, by a fortunate coincidence of principles, of very great service to us at the beginning of our existence. We fully recognize that in this sense the declaration has done and

23. Miller, D. H. *op. cit.* Vol. I, p. 445. The same view was taken in the British commentary on Article 21: "In its essence it [the Monroe Doctrine] is consistent with the spirit of the Covenant, and indeed the principles of the League, as expressed in Article X, represent the extension to the whole world of the principles of the doctrine; while, should any dispute as to the meaning of the latter ever arise between American and European Powers, the League is there to settle it." British Parliamentary Papers, *The Covenant of the League of Nations with a Commentary Thereon.* 1919, Cmd, 151, p. 18.

24. The Senate made the following reservation to the Protocol of the World Court, Jan. 27, 1926: "That adherence to the said Protocol and Statute hereby approved shall not be so construed as to require the United States to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy of internal administration of any foreign State; nor shall adherence to the said Protocol and Statute be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions."

25. Miller, D. H. *op. cit.* Vol. II, p. 715-716. [Translation ours.]

26. Minister of Foreign Affairs of Salvador to the Department of State, Dec. 14, 1919, New York *Times,* Dec. 22, 1919; Department of State to Government of Salvador, Feb. 26, 1920, New York *Times,* Mar. 2, 1920; Government of Salvador to the Department of State, Mar. 6, 1920, New York *Times,* Mar. 9, 1920.

always will do great honor to the United States, whose political history contains so many fine pages with reference to freedom and justice. It would be untrue—it is, in fact, quite untrue—to give as Article 21 gives, even by way of an example, the name of regional agreement to a unilateral political declaration which has never as far as I am aware, been explicitly approved by other American States."[27]

THE COUNCIL'S REPLY TO COSTA RICA

The Council of the League, when requested by Costa Rica to give a definition of the doctrine, declined to do so in a letter of September 1, 1928, on the ground that such a task concerns only "the States having accepted *inter se* engagements of this kind"—thus referring the Latin American States to a non-existent method of collective interpretation. It paraphrased the statement made by Lord Robert Cecil on April 10, 1919:

> "In regard to the scope of the engagements to which the Article relates, it is clear that it cannot have the effect of giving them a sanction or validity which they did not previously possess. It confines itself to referring to these engagements, such as they may exist, without attempting to define them: an attempt at definition being, in fact, liable to have the effect of restricting or enlarging their sphere of application."

The Council, however, considered itself competent to examine and clarify the relation of the doctrine to the Covenant, as established by Article 21:

> "Article 21 gives the States parties to international engagements the guarantee that the validity of such of these engagements as secure the maintenance of peace would not be affected by accession to the Covenant of the League of Nations. In declaring that such engagements are not deemed incompatible with any of the provisions of the Covenant, the Article refers only to the relations of the Covenant with such engagements; it neither weakens nor limits any of the safeguards provided in the Covenant. . . .
>
> "The Covenant of the League forms a whole; the Articles of which it is composed confer upon all the Members of the League equal obligations and equal rights, in order, as the Preamble says, to promote international co-operation and to achieve international peace and security."[28]

For the present, the Latin American States declare themselves satisfied with the Council's reply, which Argentina, at least, ascribes to the attitude taken by its delegate in the Commission on Arbitration and Security. On September 3, 1928, *La Nacion* said editorially:

> "The Council recognizes, therefore, that the reference made to the Monroe Doctrine in Article 21 had no value. It is not too much to deduce from this that the reference is virtually annulled . . . With this it is established that the juridical validity of the Monroe Doctrine has not been—as it could not be—consecrated by the League. The nations which enter the Geneva institution—even those which do not take the precaution to formulate an express reservation—will preserve their perfect right to deny to this doctrine any scope beyond that of a mere political declaration. That is the good fruit of the Costa Rican consultation, the outgrowth of the Argentine attitude in the Arbitration and Security Committee."

La Tribuna (San Salvador), in an editorial of October 10, indicates that the solution of the problem is merely postponed.

The relation of the Monroe Doctrine to the Covenant, and their connection with the provisions of the Kellogg treaties and of the Anti-War Pact, raise a number of problems which may be grouped under two heads:

(1) Their effect on the pacific settlement of disputes on the American continent.

(2) Their effect on intervention in the affairs of the American continent.

DISPUTES ON THE AMERICAN CONTINENT

It may be asked, in the first place, whether the Monroe Doctrine constitutes an obstacle to the utilization by the Latin American States of the machinery provided by the Covenant for the pacific settlement of international disputes. The Senate declared in 1919 that the United States would not submit to arbitration or to inquiry by

27. League of Nations, *Documents of the Preparatory Commission for the Disarmament Conference*, Minutes of the Second Session of the Committee on Arbitration and Security. C. 165, M. 50. Geneva, 1928, p. 90.

28. President of the Council to the Secretary of State for Foreign Affairs of Costa Rica, Sept. 1, 1928. League of Nations, *Monthly Summary*, Sept. 15, 1928. Geneva, 1928, p. 225. Harris, H. W. *Geneva 1928*, London, League of Nations Union, 1928, p. 44, says: "The general belief was that the Argentine Republic, which has always protested against the attitude of the United States as expressed in modern interpretations of the Monroe doctrine, had prompted the Costa Rican letter."

the Assembly or by the Council of the League "any questions which in the judgment of the United States depend upon or relate to its long-established policy known as the Monroe Doctrine." The bilateral Kellogg treaties, 1928, reserve from arbitration any dispute the subject matter of which "depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions, commonly described as the Monroe Doctrine."[29]

At the same time, the United States as a rule has not objected in the past when Latin American States have submitted disputes between themselves, or disputes between them and non-American States, to arbitration by the heads of European States or by arbitral tribunals with a preponderantly non-American membership.[30] The question arises whether it will oppose inquiry by the Council or by the Assembly into disputes on the American continent.

The Members of the League undertake the obligation to submit any dispute likely to lead to a rupture either to arbitration or to inquiry by the Council, and agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council (Article 12). If such a dispute is not submitted to arbitration, the matter may be submitted to the Council which, in turn, may refer it to the Assembly (Article 15).

Article 15 was invoked by Bolivia and Peru in 1920, when they requested the Assembly to consider the revision of Bolivia's treaty with Chile, 1904, and Peru's treaty with Chile, 1883.[31] Peru further invoked Article 19 of the Covenant, which provides that "the Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world." Peru eventually withdrew its request, and Bolivia expressed the desire that the question should be placed on the agenda of the next session of the Assembly. On September 3, 1921, the Chilean delegation addressed the following communication to the League:

> "A second consideration of a legal nature shows also, beyond any manner of doubt, that it is not within the competence of the Assembly to deal with Bolivia's claim. This claim concerns an *exclusively* American affair.
>
> "The use, however, of the expression 'regional understandings like the Monroe Doctrine,' in Article 21 of the Covenant, amounts to a formal recognition of the principle of American International Law, according to which the non-American States, and consequently the Assembly, cannot interfere in questions exclusively affecting countries of the New World."[32]

The case presented by Bolivia was submitted for arbitration to the President of the United States in 1922.

It may be seen that, in practice, the League has thus far avoided the settlement of disputes between Latin American States. Whether it will do so in the future depends largely, it is believed, on the attitude of the United States. That the United States considers American questions as falling outside the jurisdiction of the League was indicated by Mr. Hughes, when he said on March 26, 1919:

> ". . . In order to safeguard interests that are distinctively American, I agree with Mr. Taft that there should be a further provision that the settlement of purely American questions should be remitted primarily to American nations with machinery like that of the present League, and European nations should not intervene unless requested to do so by the American nations."[33]

"PURELY AMERICAN QUESTIONS"

To speak of "purely American questions," however, is to assume the complete isolation of the Western Hemisphere—an assumption which finds little support in existing political and economic interdependence.

If the United States should consider disputes between Latin American States, or between Latin American and non-American States as "purely American questions," it may likewise be expected to place in this

29. Treaties containing this provision have to date been concluded with Albania, Austria, Czechoslovakia, Denmark, Finland, France, Germany, Italy, Lithuania, Poland and Sweden. For further details concerning these treaties, cf. F. P. A. *Information Service*, Vol. IV, No. 17, *Arbitration on the American Continent*.

30. Cf. F. P. A. *Information Service*, Vol. IV, No. 17, *Arbitration on the American Continent*.

31. League of Nations, *Records of the First Assembly*, Plenary Meetings. Geneva, 1920, p. 595-597.

32. *Bolivia's Claim Against Chile for the Revision of the Treaty of Peace of 1904*. Geneva, 1921, A. 33, p. 3.

33. New York *Times*, Mar. 30, 1919.

category disputes with Latin American States to which it is itself a party. Article 17 of the Covenant provides that a State which is not a Member of the League, when engaged in a dispute with a Member State, shall be invited to accept the obligations of membership in the League for purposes of such dispute, "upon such conditions as the Council may deem just." Should the invitation be accepted, "the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council." The Council, upon giving such invitation, "shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances." Should the United States refuse to avail itself of the machinery thus provided for the pacific settlement of international disputes, the effectiveness of the Covenant's provisions as regards the American continent might be considerably weakened.

It will be seen that at the present time the divergence between the Monroe Doctrine and the Covenant is one not of aim but of method. Both the doctrine and the Covenant favor the pacific settlement of international disputes. The Monroe Doctrine, a regional policy, provides no machinery for arbitration or conciliation. The Covenant, universal in application, provides for several methods of pacific settlement. Unless the United States should choose to interpret inquiry by the League into American disputes as contrary to the Monroe Doctrine, it does not appear that the doctrine will constitute *per se* an obstacle to the utilization of the machinery of the League by the Latin American States.

INTERVENTION ON THE AMERICAN CONTINENT

Difficulties of a practical nature may arise, however, in regard to intervention on the American continent, which require an examination of the Monroe Doctrine, the Covenant and the Anti-War Pact.

(1) *The League may inquire into armed clashes between American States.* Article 11 of the Covenant provides that "any war or threat of war, whether immediately affecting any of the Members of the League or not," is a matter of concern to the whole League. Each Member of the League may bring to the attention of the Assembly or of the Council "any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends."

On March 4, 1921, the Secretary-General of the League sent the following telegram to the Secretaries for Foreign Affairs of Costa Rica and Panama regarding a reported boundary clash between them:

> "Council of League of Nations now sitting in Paris has had brought to its notice certain reports from which it would appear that a state of tension exists between the Governments of Costa Rica and Panama. The Members of Council feel it incumbent upon them to bring these reports to the attention of the Governments of Costa Rica and Panama States Members of the League who have solemnly and publicly subscribed to the high principles and obligations of the Covenant and to request information as to the facts."[34]

The aggrieved party, Panama, brought the dispute to the attention of the Council by a telegram of March 3, 1921, apparently received after the Council's telegram of March 4 had been sent. The Secretary for Foreign Affairs of Panama said in his telegram:

> ". . . On behalf of my Government I denounce to the Council the repeated acts of violence committed by Costa Rica against a friendly and sister State, of whose confidence and friendship it has sought to take advantage. I am confident that its attacks against the peace of the world and against the rights of Panama deserve the punishment prescribed in such cases by the Covenant of the League."[35]

Panama, however, had already accepted the good offices of the United States in this matter.

> "The Government of Panama, jealously defending its rights but amenable to any peaceful and reasonable solution, has accepted the good offices offered by the United States of America, with a view to restoring peace and law in this region of the continent."

In a second telegram dated March 4, the Council expressed its pleasure at the steps

34. League of Nations, *Minutes of the Twelfth Session of the Council, February 21-March 4, 1921.* Geneva, 1921, p. 199.

35. *Ibid.* p. 200.

taken by Panama towards a peaceful solution of the dispute:

> "Your telegram March 3rd has been communicated to the Council of the League of Nations. Council learns with regret that the Reports which formed the subject of their recent telegram are well founded but it is happy to know that the United States Government have offered their good offices and that these have been accepted by the Government of Panama. The Council would be glad to be kept informed of the development of the situation."[36]

The dispute was finally adjusted through the good offices of the United States, in favor of Costa Rica. The solution offered by the United States was not contrary to the spirit of the Covenant; it was, however, adopted outside the Covenant and did not utilize the machinery of the League.

(2) *Two Latin American States parties to a dispute, or a Latin American State engaged in a dispute with a non-American State, may refuse the good offices of the United States and of the League, and resort to war.* May the League intervene in such a case? May the United States use force to bring the conflict to an end?

Under Article 10 of the Covenant, the Members of the League undertake to preserve each other against external aggression. Should a Latin American State Member of the League be attacked, the League Members, it is believed, would be obliged to apply Article 10. Should the United States, however, intervene to put an end to the conflict, the purpose of the guarantee contained in Article 10 would be achieved. There appears to be no reason why the League should object to such a solution of the conflict.

In case of war between two Latin American States, or a Latin American State and a non-American State, the United States, for its part, would recover its freedom under the Pact with reference to the attacking State or States, provided these were signatories of the Pact. Moreover, the United States would be in a position to invoke the Monroe Doctrine, "an assertion of the principle of national security," as justifying resort to arms in self-defense.

(3) *The League may decide to apply military, economic or financial sanctions to American States which go to war in violation of their obligations (Article 16).* The application of military sanctions would probably involve the landing of troops on the American continent, and the use of naval forces in American waters. The United States, under the Monroe Doctrine, could protest against such action on the ground that it might eventually lead to occupation of American territory. It might even plead, under the Anti-War Pact, the right of resisting such measures by force in self-defense. If self-defense may be pleaded under these circumstances—and the Pact leaves each of the signatory States free to interpret the terms "war" and "self-defense"—the effect of the League's military sanctions on the American continent might be defeated.

The application of financial and economic sanctions would doubtless disrupt normal trade relations on the American continent. Under the Monroe Doctrine, the United States could claim that such measures affected its commercial interests and could likewise plead self-defense in resisting them.[37]

(4) *The League may find occasion to apply its sanctions to the United States itself.* Should the United States become involved in a dispute with an American State, and should it refuse to accept the invitation which can be extended to it by the League under Article 17 and resort to war instead, the provisions of Article 16 would become applicable to it.

(5) *A Latin American State Member of the League may enter into an agreement with the United States providing for mutual assistance in case of war.* Article XI of the unratified treaty of 1926 between the United States and Panama provided in part:

> "The Republic of Panama agrees to cooperate in all possible ways with the United States in the protection and defense of the Canal. Consequently the Republic of Panama will consider herself in a state of war in case of any war in which the United States should be a belligerent. . . ."

Panama is bound by Article 20 of the Covenant which provides that Members of the League "solemnly undertake that they

36. *Ibid.* p. 201.

37. Cf. F. P. A. *Information Service*, Vol. IV, No. 2. *American Neutrality and League Wars.*

will not hereafter enter into any engagements inconsistent with the terms thereof"; this article imposes no obligations on the United States. It may be argued that a treaty containing such a provision constitutes a violation of the Covenant. The League has not objected to the conclusion of treaties containing similar obligations by Member States, such as the French alliances.[38] It must be pointed out that these alliances are implicitly subject to the terms of the Covenant; this would not be true of a treaty to which the United States is a party. The treaty between Panama and the United States, however, could be justified as a measure of self-defense. M. Morales, delegate of Panama at the Eighth Assembly in 1927, defended it on the ground that the United States has "vital interests" in Panama.

(6) *A Latin American State may enter into an agreement with a non-American State providing for measures, such as the establishment of naval bases which, in the opinion of the United States, would constitute a menace to the Monroe Doctrine.* May the United States, under the Anti-War Pact, resort to arms in order to oppose such action?

Article 2 of the Pact provides that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among the signatory States, shall never be sought except by pacific means. It does not preclude, however, the use of force by the United States in self-defense. The United States could, it is believed, protect itself against agreements which it might consider contrary to the Monroe Doctrine; this could be done by means of treaties similar to that concluded at the Washington Conference providing for the *status quo* in regard to naval bases in the Pacific.

(7) *The Latin American States may claim that the Covenant and the Anti-War Pact constitute an obstacle to intervention by the United States in their internal affairs.* Article 10 of the Covenant guarantees not only the territorial integrity, but the political independence of Members of the League. Do measures of intervention constitute a menace to the "political independence" of a State? The Commission of Jurists, on January 24, 1924, in answer to a question submitted by the Council following the Corfu affair, gave the following opinion:

> "Coercive measures which are not intended to constitute acts of war may or may not be consistent with the provisions of Articles 12 to 15 of the Covenant, and it is for the Council, when the dispute has been submitted to it, to decide immediately, having due regard to all the circumstances of the case and to the nature of the measures adopted, whether it would recommend the maintenance or the withdrawal of such measures."[39]

This opinion, which was not adopted by the Council, was intended to cover only those cases in which measures of coercion are taken by one Member of the League against another. Moreover, such measures could be resorted to only when pacific means of settling a dispute had been exhausted, and would be subject to international control as exercised by the League.

INTERVENTION AND THE ANTI-WAR PACT

The United States made no reservation as to the Monroe Doctrine either in the course of the negotiations concerning the Anti-War Pact or at the time of signature. The Latin American States may be expected to look unfavorably upon such a reservation should it be made by the Senate.[40] They have already vigorously criticized the "British Monroe Doctrine." *La Nacion* asked editorially on September 8 whether this "doctrine" implies "the acceptance of interventions carried out in the name of Monroe," and added that it is "necessary to establish again in a categoric manner that unilateral doctrines, developed for the purpose of safeguarding the lives and property of citizens abroad, do not engender any right which may benefit those who formulate them nor diminish the rights of the countries which refuse to

38. "Genuinely defensive" military conventions are permissible under the Covenant, according to the British commentary. British Parliamentary Papers, *The Covenant of the League of Nations with a Commentary Thereon*, 1919, Cmd. 151, p. 18.

39. League of Nations, *Official Journal*, Minutes of the Twenty-eighth Session of the Council, March 10-March 15, 1924, p. 524.

40. At the present time Bolivia, Colombia, Cuba, the Dominican Republic, Panama and Peru have adhered to the Pact. Costa Rica, Haiti, Honduras, Mexico, Nicaragua, Paraguay, Uruguay and Venezuela have signified their intention to adhere. Argentina, Brazil and Chile have not yet taken any steps towards adherence. The Argentine press is of the opinion that the Latin American States should await ratification of the Pact by the Senate before adhering to it. (*La Prensa*, Aug. 30, 1928; *La Nacion*, Sept. 19, 1928.)

consent to them."[41] The Colombian Senate has approved adherence to the Pact with a reservation to the effect that the Pact condemns not only war but practical measures of violence equivalent to war, such as pacific blockades, military occupation of the ports of a debtor country and armed intervention by one State in the internal affairs of another.[42]

In the past, measures of intervention have not been viewed as measures of war. So long as this practice persists, it is unlikely that the Pact will be regarded a bar to intervention. The interpretation of the Pact being left, for the present at least, to each one of the signatory States, intervention may be declared by any one of them to be consistent with the terms of the Pact. If the Pact does not prevent intervention on the part of the United States for the protection of the lives and property of its citizens in Latin American States, it may be argued that it likewise does not prevent intervention on the part of non-American States for similar purposes.

The divergence between the Monroe Doctrine and the Covenant with regard to intervention is one not of aim, but of method. Both are intended to preserve peace and order, the former in a given region of the world, the latter universally. Intervention by the United States under the Monroe Doctrine which, it is believed, is not barred by the Anti-War Pact, would be unilateral in character and free from supervision. Intervention under the Covenant, on the other hand, would be collective in character, and subject to international control. The aggrieved State would thus be given the opportunity of airing its grievances and of appealing for redress to world opinion.

CONCLUSIONS

It may be seen from the foregoing analysis that the relation between the Monroe Doctrine and the Covenant, which has not yet been directly put to a test, raises a host of problems for the future. Whether or not these problems will remain largely theoretical, only the future can prove. The fact remains that Article 21, inserted in the Covenant when the United States was still expected to become a member of the League, now occupies an ambiguous position in an instrument to which the United States is not a party; a policy which, it was thought, the League would be in a position to interpret, remains subject to interpretation and application by a non-Member State, while permitted to affect the interests of States Members of the League. The anomalous situation thus created is further complicated by the reservation of the Monroe Doctrine from arbitration under the Kellogg treaties, and by the problems raised by the Anti-War Pact which is subject only to the unilateral interpretation of the signatory States. The Kellogg treaties and the Anti-War Pact lie outside the framework of the League, yet affect the application of a policy of the United States which Article 21 attempts, verbally at least, to transform into a "regional understanding." This dilemma leaves the following alternatives:

(1) The United States may abandon the Monroe Doctrine.

(2) The United States may become a Member of the League of Nations, and the original intention of the authors of the Covenant may thus be fulfilled.

(3) All American questions may be withdrawn from the jurisdiction of the League; this might eventually necessitate the withdrawal of the Latin American States from the League.

(4) A Pan American League with political functions may be formed, with exclusive jurisdiction over American questions.

(5) The United States and the League of Nations may reach an agreement, express or tacit, either delimiting their respective spheres of action on the American continent, or providing for joint supervision of specified American questions.

41. Argentina is reported to have raised objections to the possible use Great Britain may make of the "British Monroe Doctrine" in the New World, especially with reference to the South Orkneys. New York *Sun*, Nov. 21, 1928.

42. Compare the Soviet Government's interpretation of the Pact, given in the note in which it signified its adherence: "According to the Soviet Government wars must be forbidden not only in the juridical and formal construction of the word (that is to say, supposing the 'declaration of war,' etc.) but also military actions such as, for instance, interference, blockade, military occupation of foreign territories, of foreign ports, etc."